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SERVICE DATE - MARCH 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Section 5a Application No. 46 (Sub-No. 20)

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board is reopening the record regarding the application of the Southern Motor Carriers Rate Conference, Inc. (SMCRC) to expand the geographic scope of its collective ratemaking authority from regional to nationwide. The Board is taking this action to update the record for this matter by providing the opportunity for SMCRC to submit additional information in support of its application and for interested persons to file comments in reply to SMCRC's proposal. SMCRC will then be allowed to file rebuttal.

DATES: Initial statement from SMCRC is due by April 22, 2004. Replies are due by May 24, 2004. Rebuttal from SMCRC is due by June 7, 2004.

ADDRESSES: Send an original and 10 copies of pleadings, referring to STB Section 5a Application No. 46 (Sub-No. 20), to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. Also, send one copy to the representative of applicant SMCRC in STB Section 5a Application No. 46 (Sub-No. 20): Law Office of John R. Bagileo, No. 300, 1101 30th Street, N.W., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1609. [Federal Information Relay Service for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: SMCRC is one of several motor carrier rate bureaus (associations of motor carriers of property) that have antitrust immunity to set rates collectively under Board jurisdiction and oversight pursuant to 49 U.S.C. 13703. SMCRC currently engages in collective ratemaking on a regional (non-nationwide) basis. In 1994, SMCRC filed an application with the Interstate Commerce Commission, the Board's predecessor agency, for authority to operate

collectively on a nationwide basis,<sup>1</sup> and six other regional rate bureaus responded with separate requests that they be granted nationwide authority in the event that nationwide authority was granted to SMCRC. The territorial expansion requests were eventually (a) consolidated for decision, (b) merged into a broader proceeding to determine whether there was still a need for antitrust immunity for collective ratemaking, and (c) made the subject of two requests in the Federal Register for comments.<sup>2</sup> In a decision served on December 18, 1998, in EC-MAC Motor Carriers Service Assoc., Inc., Et AL, 3 S.T.B. 926, 935 (1998) (EC-MAC), the Board commented favorably on territorial expansion, provided that the bureaus reduce their class rate levels, but the agency declined to resolve the issue with finality due to a request for delay from certain members of Congress. In December 1999, Congress amended the Board's governing statute to prohibit the agency from authorizing regional rate bureaus to operate nationwide.<sup>3</sup> Recognizing this amendment in its February 2000 decision in EC-MAC,<sup>4</sup> the Board thereafter took no further action to rule on the requests for nationwide authority, although most of them were never formally dismissed.<sup>5</sup> On February 20, 2003, Congress removed the prohibition against granting nationwide collective ratemaking authority.<sup>6</sup>

By petition filed on November 5, 2003, SMCRC asks the Board to reopen and to reconsider its prior request for nationwide collective ratemaking authority in light of the repeal of the statutory

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<sup>1</sup> SMCRC's application for nationwide authority was originally docketed as Section 5a Application No. 46 (Amendment No. 19). On December 19, 1996, SMCRC resubmitted its request for nationwide authority in a new application that was docketed as Section 5a Application No. 46 (Sub-No. 20), the subject of the instant notice. SMCRC's (Sub-No. 20) application also proposed minor, unrelated changes that were separately approved in a decision served on September 4, 1997.

<sup>2</sup> See 59 FR 25121 (May 13, 1994) (consolidating the territorial expansion requests and seeking comments); 62 FR 27653 (May 20, 1997) (broadening the issues to include the need for continued antitrust immunity for bureaus and seeking additional comments on all issues).

<sup>3</sup> See former 49 U.S.C. 13703(d) (2000).

<sup>4</sup> EC-MAC Motor Carriers Service Association, Inc., Et AL, Sec. 5a Application No. 118 (Amendment No. 1), et al. (STB served Feb. 11, 2000). See also the decisions in EC-MAC served on November 20, 2001, and March 27, 2003.

<sup>5</sup> The only exception was the application of the Niagara Frontier Tariff Bureau, Inc., which was dismissed at its own request in EC-MAC Motor Carriers Service Association, Inc., Et AL, Sec. 5a Application No. 118 (Amendment No. 2), et al. (STB served Oct. 16, 2003).

<sup>6</sup> See section 354 of the Omnibus Appropriations Act FY 2003, Pub. L. No. 108-7, 117 Stat. 11 (Feb. 20, 2003), H.R. Conf. Rep. No. 108-10 (2003).

prohibition against it. SMCRC argues that the Board previously expressed an intent to approve nationwide collective ratemaking authority and would have done so but for the prior statutory prohibition. SMCRC maintains that its request for nationwide authority can be approved on the present record.

On November 25, 2003, the National Small Shipments Traffic Conference, Inc., (NASSTRAC) filed a reply opposing SMCRC's request that the Board approve its application for nationwide authority without seeking new evidence to supplement the record. NASSTRAC states that it has expressed general support for nationwide authority in the past, to promote competition among rate bureaus. However, NASSTRAC argues that the current record is out-of-date, and it urges the Board to consider in detail how the expanded authority sought by SMCRC would affect competition among rate bureaus and collectively set rates.

On December 15, 2003, the United States Department of Transportation (DOT) filed a reply opposing SMCRC's request for nationwide authority. DOT argues that any expansion of the territorial scope of collective ratemaking would be "contrary to the public interest." Alternatively, DOT urges that, if the Board wishes to give SMCRC's request serious consideration, the agency should develop a new record. Similar objections were raised in two other replies filed on the same date by (a) the National Industrial Transportation League and (b) two other rate bureaus (EC-MAC Motor Carriers Service Association, Inc., jointly with the Rocky Mountain Motor Tariff Bureau, Inc.). The two other rate bureaus suggest that the issue of territorial expansion be resolved in the periodic (5-year) review proceeding that the Board is required to begin again in 2004 to evaluate current bureau agreements under 49 U.S.C. 13703(c)(2).

The Board will reopen the record to seek additional information and comments. The present record is at least 6 years old. Additional information and the opportunity for public comments are needed in light of industry changes, subsequent statutory revisions, and the Board's decisions in EC-MAC, cited above. After the comments are received and analyzed, the Board will schedule an oral argument on the issues raised by SMCRC's application.

Board decisions, notices, and filings are available on its website at "WWW.STB.DOT.GOV."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 12, 2004.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary